

RESOLUTION No. 2006-119-465-Z-58

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS, FLORIDA, DENYING THE APPLICATION SUBMITTED BY FLORIDA AUCTION OF ORLANDO, INC., FOR A VESTED RIGHTS/TAKINGS DETERMINATION IN ACCORDANCE WITH SECTION 2-114.1 OF THE MIAMI DADE COUNTY CODE OF ORDINANCES, AS MADE APPLICABLE TO THE CITY OF MIAMI GARDENS, PROVIDING FOR THE ADOPTION OF REPRESENTATIONS; PROVIDING AN EFFECTIVE DATE.

WHEREAS, Florida Auto Auction of Orlando, Inc. ("Applicant"), filed a Notice of Invoking Administrative Remedies, pursuant to Section 2-114.1 of the Miami-Dade County Code, and

WHEREAS, Section 33-317 of the Miami-Dade County Code is made applicable to the City of Miami Gardens, by virtue of Section 8.3 of the City of Miami Gardens Charter, and

WHEREAS, the Application was filed in response to an application of the City of Miami Gardens Development Services Director for a determination from the City Council, as to whether certain Unusual Uses and Variances previously approved by the Miami-Dade County Board of County Commissioners (BCC) by virtue of Resolution Z-166-96, for certain property owned by the Applicant ("Site"), should be terminated pursuant to Section 33-317 of the Code, due to sufficient change in the area, and

WHEREAS, the applicant claims that terminating such Unusual Uses and Variances on the site would abrogate its vested rights, and would constitute a regulatory taking under the United States and Florida Constitutions, and

WHEREAS, the City's Planning and Zoning Consultants have completed a study and analysis that demonstrates that terminating requests #1 through #8 of Resolution Z-166-96, and the unusual use and variances associated therewith, for an auction use on

the Site does not deny the Applicant any vested rights; and further, would not constitute a taking pursuant to the Constitution of the State of Florida or the United States Constitution, for the following reasons:

- The approvals that the City now seeks to terminate were granted by Miami-Dade County prior to the incorporation of the City of Miami Gardens in 2003. Since its incorporation, the City has created its own identity, separate and apart from that of Miami-Dade County, and has an obligation to ensure that all development in the City serves the best interest of its residents.
- The revocation of Unusual Uses and Variances is specifically permitted by a provision in Section 33-317 of the Code that allows termination if the approvals have not been utilized within three years of being granted, and upon a showing of "sufficient changes in circumstances in the neighborhood and area concerned that to permit the same to be used would be detrimental to the area and incompatible therewith." This Code provision was in effect at the time of the approvals.
- The current Applicant is not the same applicant who applied for the prior unusual use approvals. When this applicant acquired the Site it knew, or should have known that the prior approvals could be terminated because they had not been utilized within the three (3) year-period. Moreover, the acquisition costs of the Site do not establish vested rights, as acquisition is not an activity that necessarily relies upon the approvals that the City seeks to terminate. Likewise, real estate taxes paid and money paid to the Miami-Dade County Building Department for violations of the Building Code are costs associated with property ownership, and not necessarily with pursuit of development under the subject approvals. Moreover, the Applicant has admitted that it may still need other approvals, including variances, special exceptions, unusual uses, plats, modifications of resolutions, and other permits to move forward. Some of these approvals are subject to discretionary votes of the City Council, and therefore are not guaranteed.
- The Applicant has taken actions that are inconsistent with the development of the auto auction that was previously approved on the Site. The City Planning and Zoning Department received a site plan on August 17, 2005 prepared by Miller Legg for the site. These new plans, however, were quite different than those approved in 1996, suggesting that the applicant was not relying on

that previous approval, but instead requires new approvals or modifications of prior approvals in pursuit of its development desires on the subject Site. This demonstrates that even the Applicant recognizes that there have been sufficient changes in the area since 1996.

- There is no taking here because the Applicant received other developmental approvals on the Site. Even if the potential revocation were to go forward, the subject site would still retain substantial development approvals. Those approvals include a site plan for an industrial park approved by a condition of Resolution Z-165-90 on Parcel 1 (the westerly 96.08 acres) and a site plan for a zero-lot-line (ZLL) single family residential development on Parcel 2 (the easterly 91.9 acres) approved through a condition of Resolution Z-148-92. The property owner also retains a multitude of valuable development options available under the Light Industry (IU-1) zoning district that would remain on Parcel 1, and under the Zero-Lot-Line Single Family Residential (RU-1Z) zoning district that would remain on Parcel 2. If the applicant wished to pursue rezoning options, Parcel 1 and Parcel 2 are proposed for the Commerce and Neighborhood future land use designations, respectively, under the new Miami Gardens Comprehensive Development Master Plan (CDMP), further widening the field of possible future uses of the Site.
- The Applicant cannot demonstrate that the City's termination of the prior approval for an auction would deprive the property owner of all reasonable and economically viable use of the subject Site, which is a prerequisite for establishing a valid takings claim, because of the other approvals that remain on the Site.

WHEREAS, the applicant was granted an administrative hearing on October 4, 2006, and

WHEREAS, the City Council considered the testimony of the City's planning and zoning staff, the City's planning and zoning consultants, and the Staff Report attached hereto as Exhibit "A", incorporated herein by reference, and

WHEREAS, the City Council also considered the testimony of the property owner and the property owner's representatives,

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS, FLORIDA, AS FOLLOWS:

Section 1. ADOPTION OF REPRESENTATIONS: The foregoing Whereas paragraphs are hereby ratified and confirmed as being true, and the same are hereby made a specific part of this Resolution.

Section 2. DENIAL OF VESTED RIGHTS/TAKINGS DETERMINATION: The City Council for the City of Miami Gardens, Florida, adopts the findings of the aforementioned Whereas clauses, as well as the finding of the Staff Report attached hereto as Exhibit "A," and hereby denies the Applicant's request for administrative remedies.

Section 3. EFFECTIVE DATE: This Resolution shall take effect immediately upon its final passage.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS AT ITS ZONING MEETING HELD ON OCTOBER 4, 2006.

ATTEST:


RONETTA TAYLOR, CMC, CITY CLERK


SHIRLEY GIBSON, MAYOR

Prepared by SONJA KNIGHTON DICKENS, ESQ.
City Attorney

SPONSORED BY: DANNY O. CREW, CITY MANAGER

MOVED BY: Mayor Gibson

SECONDED BY: Councilman Campbell

VOTE: 4-2

Mayor Shirley Gibson

x (Yes) (No)

Vice Mayor Oscar Braynon, II
Councilman Melvin L. Bratton
Councilman Aaron Campbell
Councilman Ulysses Harvard
Councilwoman Sharon Pritchett
Councilwoman Barbara Watson

<u> </u> (Yes)	<u> x </u> (No)
<u> </u> (Yes)	<u> </u> (No) Not present
<u> x </u> (Yes)	<u> </u> (No)
<u> </u> (Yes)	<u> x </u> (No)
<u> x </u> (Yes)	<u> </u> (No)
<u> x </u> (Yes)	<u> </u> (No)